



Comptroller General  
of the United States

110596

Washington, D.C. 20548

## Decision

**Matter of:** E. W. Bliss Company

**File:** B-255648.3

**Date:** April 26, 1994

Richard A. Degen, Esq., for the protester.  
Irwin Ansher, Esq., and Barry E. Kearns, Department of the Treasury, for the agency.  
Behn Miller, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Contention that contract is void because solicitation's delivery order issuance period expired prior to contract award is denied where the contention is incorrect--i.e., the ordering period does not expire until approximately 1 year after the actual award date.
2. Protest that agency improperly made a partial award is denied where solicitation incorporated Federal Acquisition Regulation § 52.215-16 which expressly advises offerors that the agency may award a contract for any item or group of items set forth in the solicitation unless the awardee has qualified the acceptance terms of its offer, which is not the case here.
3. In procurement for retrofit of coin press machines, where awardee's proposal obligated it to replace existing crankshafts if required, agency reasonably interpreted proposal as complying with solicitation provision directing offerors to "address" need for new crankshafts.

### DECISION

E. W. Bliss Company protests the award of a contract to Pressmasters of Delaware Valley, Inc. under request for proposals (RFP) No. USM 93-14, issued by the United States Mint, Department of the Treasury, to retrofit various coin pressing machines. Bliss contends that the award is void since the underlying order period expired before the agency completed the procurement, and because the agency awarded only part of an option year quantity. Bliss also contends that the agency improperly waived a part specification for the awardee.

We deny the protest.

On July 28, 1993, the Mint issued the solicitation as a total small business set-aside to 15 offerors. The purpose of this procurement was to determine the feasibility of refurbishing and remanufacturing the Mint's coin presses at a reasonable price.

On August 6, the agency conducted a pre-proposal conference which Bliss and several other offerors attended; on August 17, the agency issued amendment No. 0001 which responded to questions raised at the conference. Of relevance to this protest, the amendment provided that offerors "should address a new crankshaft" for each of the coin presses requiring repair. On August 24, in response to a contractor's inquiry, the agency issued a second amendment which listed two sources in the Denver area who were capable of transporting the coin presses.

Under the RFP, offerors were to submit both price and technical proposals. For their price proposals, offerors were to complete six pricing schedules requiring fixed-price estimates for nine equipment and related repair service contract line item numbers (CLIN). The first two pricing schedules required estimates for retrofit operations performed during a base 1-month period ending September 30, 1993; the second two pricing schedules required estimates for the same repairs during a 1-year period ending September 30, 1994 (option No. 1); and the remaining two pricing schedules required estimates for a 1-year period ending September 30, 1995 (option No. 2). In addition to the required repairs, offerors were invited to propose any additional equipment items or services which might improve the operation of the coin presses, or otherwise benefit the coin production process.

The solicitation provided that contract award would be made to the most advantageous offer, price and other factors considered. The RFP also incorporated Federal Acquisition Regulation (FAR) § 52.215-16, which states that the government may award a contract on the basis of initial proposals.

By the August 30 closing date, four proposals were received and forwarded to a technical evaluation panel (TEP) for review. On September 8, the agency issued amendment No. 0003 to all four offerors, extending the government's time period for issuing delivery orders under this solicitation from September 30, 1993, until September 30, 1994; each offeror signed and returned this amendment to the agency by September 14, 1993.

Shortly thereafter, the TEP completed its proposal evaluation and awarded both the Bliss and Pressmasters technical proposals an "Excellent" rating; however, Pressmasters received a slightly higher numerical score (81 points) than Bliss (78 points). The remaining two offers received an "Average" rating. On October 28, the contracting officer awarded a contract for six of the option No. 1 CLINs to Pressmasters because its proposal had a higher numerical score and was lower priced than the proposal submitted by Bliss. No discussions were conducted with any offeror. On November 4 and December 15, Bliss filed these protests with our Office.<sup>1</sup>

#### PROTESTER'S CONTENTIONS

Bliss first contends that the contract award to Pressmasters is void because the solicitation's delivery order period has expired. According to Bliss, the solicitation expressly provided that all delivery orders had to be issued to the awardee by September 30, 1993. Since no contract award was made until October 28, 1993--1 month after the alleged expiration of the solicitation's specified delivery order period--Bliss contends that the contract award is void. Bliss also argues that the award to Pressmasters is improper since the agency made an award for only 6 of the solicitation's 54 CLINs. Finally, based on information set forth in the agency report, Bliss contends that the agency waived a material specification for the awardee--i.e., the requirement that all offerors include a new crankshaft for the coin presses as part of the required retrofit procedures.

#### DISCUSSION

##### Expiration of Delivery Order Period

Notwithstanding Bliss's contention, the delivery order period has not expired. Rather, amendment No. 0003 extended the period for issuing delivery orders until September 30, 1994. In its arguments to the contrary, Bliss ignores the clear language of amendment No. 0003, which it signed and returned to the agency on September 14, 1993.

##### Propriety of Partial Award

Bliss next objects to the agency's decision to award only 6 of the RFP's 54 CLINs; as noted above, the 6 CLINs which Pressmasters was awarded were designated as Option No. 1

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<sup>1</sup>On March 21, we consolidated these protests for resolution under B-255648.3.

CLINs in the solicitation and correspond to separate coin press repairs required at the Philadelphia and Denver Mint. Bliss contends that this partial option quantity award violates the terms and conditions of the RFP. We disagree.

The agency reports that it awarded only the first option quantity because by the time of contract award--October 28, 1993--the solicitation's specified base period had expired. The agency also explains that it awarded only six of the CLINs--procuring retrofit operations for two coin presses at the Philadelphia Mint site and two coin presses at the Denver Mint site--because it concluded that this number would provide an adequate basis from which to assess the feasibility of proceeding with future retrofitting procurements. The record also shows that funding concerns and time constraints further limited the agency's award quantity. The agency states that if it does not decide on a procurement strategy in the near future, it may lose the funds which were appropriated to address the problem with the aging coin presses.

As noted above, the solicitation incorporated FAR § 52.215-16 which provides that the government will award a contract to the "most advantageous" offer, and which further provides, in relevant part:

"The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations . . . The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer." [Emphasis in original.] FAR § 52.215-16(d).

Although Bliss argues that it would have offered lower prices had it realized that limited quantity awards were contemplated, we think that in light of the incorporation of FAR § 52.215-16, the Pressmasters award is unobjectionable.<sup>2</sup> The FAR provision expressly advises offerors that the government may make award for lesser quantity amounts, and warns that "each initial offer should contain the offeror's best terms from a cost or price and technical standpoint." Under these circumstances, offerors

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<sup>2</sup>We note that Pressmasters did not qualify its proposal as an "all or none" offer.

are on notice to submit their best unit prices. See Essex Electro Eng'rs, Inc., B-238207; B-238207.2, May 1, 1990, 90-1 CPD ¶ 438. If Bliss failed to heed these warnings, it cannot now complain that it was prejudiced as a result.<sup>3</sup> Id.; Duracell, Inc.; Altus Corp., B-229538 et al., Feb. 12, 1988, 88-1 CPD ¶ 145. In this regard, Bliss has not explained--nor does the record suggest--why its pricing would have been any different had the firm been aware that no base month period CLIN would be awarded.

#### Awardee's Compliance with Crankshaft Specification

Bliss contends that the agency improperly waived the requirement, intended by amendment No. 0001, that offerors provide a new crankshaft as part of the retrofit effort here. As evidence of this waiver, Bliss points to Pressmasters' pricing proposal which sets forth the following statement at the bottom of each pricing schedule:

"OPTIONAL: NEW CRANKSHAFT & CLUTCH BRAKE[:] \$17,400"

Since the record shows that the award price does not include the above-referenced \$17,400 option, and since the agency reports that this optional item is not part of the award, Bliss contends that Pressmasters did not propose a new crankshaft for each retrofit operation, as required by the RFP.

As a preliminary matter, we note that our review of the record reveals that notwithstanding the agency's apparent intent to require a new crankshaft for each coin press retrofit, in fact the specification requiring this item is ambiguously worded. In this regard, where a solicitation requirement is susceptible to two or more reasonable interpretations in the context of reading the solicitation as a whole, we consider the requirement to be ambiguous. See Pulse Elecs., Inc., B-243769, Aug. 2, 1991, 91-2 CPD ¶ 122.

Here, the specific language of amendment No. 0001 which purported to incorporate the new crankshaft requirement provided:

"Q. How will we be able to determine if the crank shaft is good without disassembling the presses . . . ?

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<sup>3</sup>We note that even if the agency had proceeded to award a contract for all 54 CLINs, Pressmasters would still have been the lowest-priced offeror by approximately 39 percent.

"A. The proposal should address a new crankshaft to insure consistencies between the new remanufactured presses. All old components removed from the presses shall be returned to the Mint for use as spare parts."

Although the protester interpreted this amendment consistent with the agency's intent--that offerors provide a new crankshaft as part of each coin press retrofit--it is clear from the record that the awardee interpreted this amendment to require a new crankshaft only in the event that the existing crankshaft could not be refurbished. Thus, in the section of its proposal addressing this requirement, Pressmasters indicated that it would "[e]valuate all parts for remanufacture or replacement." Given the imprecise wording of the question and answer set out above, we think that Pressmasters' proposal reasonably could be interpreted to comply with the direction in amendment No. 0001 to "address" a new crankshaft.

The protester argues that as a result of the awardee's interpretation of the amendment, Pressmasters' offer was noncompliant with the requirement for a new crankshaft. The protester asserts that Pressmasters' separately priced crankshaft/brake/clutch assembly was offered in lieu of a new crankshaft for the routine refurbishing effort, and consequently, Pressmasters' base offer does not include a new crankshaft. The agency responds that notwithstanding the awardee's interpretation of amendment No. 0001, offering a new OEM crankshaft was nevertheless implicit in Pressmasters' base proposal, in addition to its separate offer of a crankshaft/brake/clutch assembly. We agree.

It is clear from the record that the \$17,400 option referenced in Pressmasters' proposal was not intended by the awardee to constitute the only means of acquiring a new crankshaft. Rather, the \$17,400 option was proposed in direct response to paragraph C.4.3 of the solicitation, which "encouraged" offerors "to provide recommendations that may improve equipment performance and/or schedule." In accordance with this provision, Pressmasters proposed an alternative clutch/brake/assembly designed by the firm to improve the speed of the coin press machines. Page 10 of Pressmasters' proposal explains that because its suggested clutch/brake assembly requires a different crankshaft than the crankshaft which might be required for a standard coin press retrofit, the awardee proposed an alternative crankshaft/brake/clutch assembly as a separate purchase option at the bottom of each of its pricing schedules. Thus, this option was proposed for the agency's consideration completely separate and distinct from the new OEM crankshaft part contemplated by the agency for the base retrofit operations.

We turn now to the question of whether Pressmasters' base proposal otherwise properly offered the new crankshaft sought by the agency. We conclude that it did.

At the outset, we note that Pressmasters properly acknowledged receipt of amendment No. 0001 on the cover of its proposal, thereby demonstrating its intent to perform in accord with the terms of the solicitation as amended. While Pressmasters' interpretation of amendment No. 0001 apparently led it to conclude that a new crankshaft would not be required if the current crankshaft was in good condition or otherwise capable of being successfully refurbished, the fact remains that Pressmasters' proposal took into consideration the possibility that a new crankshaft would be required for every coin press where the current crankshaft was irreparable. Thus, although Pressmasters did not use the term "new crankshaft" in its offer, it nevertheless obligated itself to provide a new crankshaft whenever the circumstances of the retrofit operations so required--either because the current coin press crankshaft had so deteriorated or to "insure consistencies" with the other coin presses, as referenced in amendment No. 0001.

Since the crankshaft is an integral component of each coin press, and since the awardee acknowledged amendment No. 0001 in its proposal, we think the agency reasonably concluded that Pressmasters' offer included a new crankshaft item for each coin press retrofit operation where appropriate. In fact, the agency reports that Pressmasters has already performed the coin press machine repairs, and has--consistent with its promise to replace irreparable parts--provided a new crankshaft as part of each coin press retrofit, for the base price submitted in its offer.<sup>4</sup>

Since Pressmasters was bound by its promise to replace irreparable parts such as the crankshaft with new items as part of its base price, four new crankshafts were required and provided; and Bliss has failed to allege--and the record does not otherwise suggest--that it would have reduced its price based on Pressmasters' interpretation of

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<sup>4</sup>Because of urgent and compelling circumstances, the agency proceeded with contract performance in the face of this protest.

the solicitation's crankshaft requirement, we find the Pressmasters award to be unobjectionable.

The protest is denied.

*Robert P. Murphy*  
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Acting General Counsel